

# HOUSE BILL REPORT

## HB 1890

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**As Reported by House Committee On:**  
Finance

**Title:** An act relating to the business and occupation taxation of slaughtering, breaking and/or processing perishable meat products.

**Brief Description:** Modifying the business and occupation taxation of slaughtering, breaking, and/or processing perishable meat products.

**Sponsors:** Representatives McIntire, Upthegrove and Sommers.

**Brief History:**

**Committee Activity:**

Finance: 2/23/05, 3/7/05 [DPS].

**Brief Summary of Substitute Bill**

- Limits the preferential business and occupation tax rate for manufacturing and wholesaling of meat products to activities where: (1) the finished product is a perishable meat product; (2) dehydration, curing or smoking is used to produce a finished meat product that is not canned; or (3) hides, tallow, meat meal and other meat by-products are produced at a licensed rendering plant.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McIntire, Chair; Hunter, Vice Chair; Conway, Hasegawa and Santos.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Ahern and Ericksen.

**Staff:** Rick Peterson (786-7150).

**Background:**

The business & occupation (B&O) tax is levied for the privilege of doing business in the state. The tax is levied on the gross receipts of all business activities conducted within the state without deductions for the costs of doing business. Currently, there are seven different B&O tax rates. The three principal rates are:

Manufacturing/wholesaling 0.484%

Retailing	0.471%
Services	1.5%

In 1967, the Legislature authorized a preferential B&O tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The tax rate is 0.138 percent rather than the general manufacturing rate of 0.484 percent. Since its enactment, the Department of Revenue has allowed this preferential tax rate to be taken only if the finished product was a perishable meat product. On January 13, 2005, in *Agrilink Foods, Inc. v. Department of Revenue*, Docket No. 74478-5, the state Supreme Court held that the preferential B&O tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable meat products, such as canned food.

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**Summary of Substitute Bill:**

The preferential tax rate for manufacturing and wholesaling of meat products is limited to activities where: (1) the finished products are a perishable meat product; (2) dehydration, curing or smoking is used to produce a finished meat product that is not canned; or (3) hides, tallow, meat meal and other meat by-products are produced at a licensed rendering plant.

**Substitute Bill Compared to Original Bill:**

The substitute applies prospectively only, provides definitions of "meat product" and "perishable," and clarifies which meat product manufacturing and wholesaling activities are eligible for the 0.138 percent B&O rate. These activities are: manufacturing perishable meat products; manufacturing cured, smoked, and dehydrated meat products; manufacturing hides, tallow, meat meal, and other similar meat by-products; and wholesaling any of these products.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately, except for section 4, relating to technical corrections, which takes effect July 1, 2006.

**Testimony For:** None.

**Testimony Against:** It is not accurate to say that the Department of Revenue has had a long standing consistency in the construction of this statute. There is no foundation to the Department's analysis. There have been two issues regarding this statute -- is the end product perishable and is the end product a meat product. The fiscal note is flawed. The issue before the Supreme Court was limited to the question of whether the end product is perishable. The fiscal note assumes a broader application of the Supreme Court case. Claims over the question of whether the end product is a meat product should not be included in the fiscal note. The

bill, by adding the perishable requirement, is a tax increase. There is no assurance that jerky will continue to be given the lower rate. If the bill is not intended to impose higher taxes on jerky and sausage then the bill should directly address these and not wait for rule making. We are opposed to the retroactive application of the tax. Retroactive change may undermine the voluntary tax compliance because the tax system is perceived as unfair. There are two constitutional issues. One is due process. Also, an attempt to overturn a Supreme Court decision violates the separation of powers. It is unfair to reverse, on a retroactive basis, once a taxpayer has gone through the entire appeal process and won.

**Persons Testifying:** (Opposed) Scott Edwards, Perkins Coie Law Firm; Tom Capanile, Oberto Meat Company; T.K. Bentler, Washington Food Processors; and Tom McBride and Pamela Charles Brown, Washington State Bar Association, Taxation Law Section.

**Persons Signed In To Testify But Not Testifying:** None.